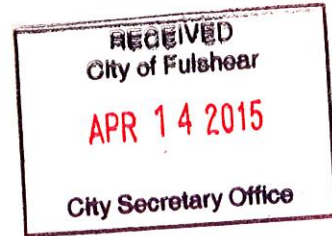




April 1, 2015



Ms. D. (Diana) Gordon Offord  
City Secretary  
City of Fulshear  
P.O. Box 279, 30603 FM 1093  
Fulshear, Texas 77441

Re: Executed Economic Development Incentive Agreement

Dear Ms. Offord,

Enclosed please find a copy of the "Economic Development Incentive Agreement" that has been executed as requested. We look forward to working with you and if you need any additional information please feel free to contact our office.

Thank you,

A handwritten signature in blue ink that reads "Dan Miller".

Dan Miller  
Chief Financial Officer

Enclosure  
DM/lc

## ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT

This Economic Development Incentive Agreement ("Agreement") is made by and between the City of Fulshear, Texas ("City", also referred to as "Grantor") and Highland Homes - - Houston, Ltd. (the "Company"), acting by and through their respective authorized officers and representatives.

WHEREAS, the Company will be engaged in the business of purchasing building materials for its use within the City; and

WHEREAS, the Company has advised that it would like to partner with the City, and that a contributing factor that would induce the Company to purchase items using a Texas Direct Payment Permit and generate local use tax revenue for the City, that would otherwise not be available to the City, would be an agreement by the Grantor to provide an economic development grant to the Company; and

WHEREAS, the Company desires to purchase and use new building materials within the City that will generate additional use tax revenue for the City; and

WHEREAS, the City finds that the attraction of new business activity to the City will promote economic development, generate additional use tax and will enhance the tax base and economic vitality of the City; and

WHEREAS, the City hereby approves the project and expenditures established by the terms of this Agreement; and

WHEREAS, with the approval of this Agreement, the City hereby establishes a program authorized by Chapter 380 of the Texas Local Government Code to encourage and induce the generation of local use tax; and

WHEREAS, the Grantor has determined that making an economic development grant to the Company in accordance with this Agreement will further the objectives of the Grantor, will benefit the City and the City's inhabitants and will promote local economic development and stimulate business and commercial activity in the City;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I  
DEFINITIONS

1. For purposes of this Agreement, each of the following terms shall have the meaning set forth herein unless the context clearly indicates otherwise:

“City” and “Grantor” shall mean Fulshear, Texas.

“Company” shall mean Highland Homes - - Houston, Ltd.

“Commencement Date” shall mean April 1, 2015

“Effective Date” shall mean April 1, 2015.

“Event of Bankruptcy or Insolvency” shall mean the dissolution or termination (other than a dissolution or termination by reason of a party merging with an affiliate) of a party’s existence as a going business, insolvency, appointment of receiver for any part of a party’s property and such appointment is not terminated within ninety (90) business days after such appointment is initially made, any general assignment for the benefit of creditors, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against a party and in the event such proceeding is not voluntarily commenced by the party, such proceeding is not dismissed within ninety (90) business days after the filing thereof.

“Force Majeure” shall mean any delays due to strikes, riots, acts of God, shortages of labor or materials, war, terrorism, governmental approvals, laws, regulations, or restrictions, or any other cause of any kind whatsoever which is beyond the reasonable control of the party.

“Program” shall mean the economic incentive program established by the City pursuant to Chapter 380 of the Texas Local Government Code.

“Program Grant” shall mean the periodic payments paid by the City to the Company in accordance with Section 3 of this Agreement.

“Grant Period” shall mean consecutive six (6) month periods during the term of this Agreement, except that the first Grant Period shall begin on the Effective Date and continue through and include the last day of June 2015 following the Effective Date. For illustration purposes, assume the Effective Date is April 1, 2015 then the first Grant Period would begin on April 1, 2015 and continue through and include June 30, 2015. The next Grant Period would begin on July 1, 2015 and continue through and include December 31, 2015. The final Grant Period for the initial 10 year term of the Agreement would be from January 1, 2025 and end on March 31, 2025.

“Taxable Items” shall have the same meaning assigned by Sections 151.010 and 151.0101, TEX. TAX CODE, as amended

“Impositions” shall mean all use taxes that may be imposed by public or governmental authority on the Company or any taxable items purchased and used by Company within the City.

“Use Tax Receipts” shall mean the Grantor’s receipts from the State of Texas from the collection of one percent (1%) general City use tax imposed by the City pursuant to Chapter 321 of the Texas Tax Code, attributed to the collection of use tax by Company associated with the issuance of Company’s Texas Direct Payment for Taxable Items used or consumed in the City.

“Use Tax Certificate” shall mean a certificate or other statement in a form reasonably acceptable to the Grantor setting forth the Company’s collection of use tax imposed by and received by the Grantor from the State of Texas, for the use of Taxable Items by Company in the City for the applicable calendar month during Grant Period which are to be used to determine Company’s eligibility for a Grant, together with such supporting documentation required herein, and as Grantor may reasonably request.

## ARTICLE II TERM

2.01 Term. The term of this Agreement shall begin on the Effective Date and continue for a 10 year period.

2.02 This Agreement shall remain in effect until Grantor has made the Program Grants set forth in Section 3 of the Agreement, or until otherwise terminated under the provisions of this Agreement.

2.03 This Agreement may be extended for an additional period of time on terms mutually acceptable to both parties by a written agreement executed by both parties.

ARTICLE III  
ECONOMIC DEVELOPMENT GRANT

3.01 Grant. Subject to the Company's continued compliance of all the terms and conditions of this Agreement, the Grantor agrees to provide Company with semi-annual economic development grants from lawfully available funds payable in an amount equal to 100% of the Use Tax Receipts, as previously defined herein (the "Grant"). The Grant will never include any monies the Company pays or owes to the State of Texas for any penalties for late payments, failures to report in a timely manner, and the like, related to the Use Tax Receipts.

3.02 Grant Payment. Grantor shall pay the Grant for the applicable Grant Period within thirty (30) days after receipt of a Use Tax Certificate from Company following the end of each Grant Period, pursuant to Section 4.01. Company shall submit Use Tax Certificates to Grantor within thirty (30) days following the end of the applicable Grant Period, beginning with the first Grant Period. For illustration purposes, assume the first Grant Period begins on April 1, 2015 and continues through and includes June 30, 2015. Company would submit a Use Tax Certificate to Grantor for the first Grant Period by July 30, 2015 and Grantor would pay the first Grant within thirty (30) days after receipt of the Use Tax Certificate. Further assume that the Use Tax Receipts for the first Grant Period equal Twenty Thousand Dollars (\$20,000.00), then the amount of the first Grant would be Twenty Thousand Dollars (\$20,000.00).

3.03 Amended Returns and Audits. In the event the Company files an amended use tax return, or report, or if additional use tax is due and owing, as a result of an audit conducted by the State of Texas that increases the Use Tax Receipts for a previous period covered within the term of this agreement, the Grant payment for the Grant Period immediately following such State approved amendment shall be adjusted accordingly, provided Grantor must have received the Use Tax Receipts attributed to such adjustment. As a condition precedent to payment of such adjustment, Company shall provide Grantor with a copy of such amended use tax report, tax return or audit adjustment, and the approval thereof by the State of Texas.

3.04 Refunds. In the event the State of Texas determines that the City erroneously received Use Tax Receipts, or that the amount of use tax paid to the City exceeds the correct amount of use tax for a previous Grant paid to the Company, the Company shall, within thirty (30) days after receipt of notification thereof from the City specifying the amount by which such Grant exceeded the amount to which the Company was entitled pursuant to such State of Texas determination, pay such amount to the Grantor. The Grantor may at its option adjust the Grant payment for the Grant Period immediately following such State of Texas determination to deduct there from the amount of the overpayment. As a condition precedent to payment of such refund, the City shall provide Company with a copy of such determination by the State of Texas.

ARTICLE IV  
DOCUMENTATION SUPPORTING THE ECONOMIC DEVELOPMENT GRANT

The conditions contained in this Article IV are conditions precedent to the Grantor's obligation to make any Grant payment.

4.01 Use Tax Certificate. During the term of this Agreement, Company shall within thirty (30) days after the end of each six (6) month Grant Period provide Grantor with a Use Tax Certificate relating to Use Tax Receipts paid during the Grant Period. The Grantor shall have no duty to calculate the Use Tax Receipts or determine Company's entitlement to any Grant for a Grant Period, or pay any Grant during the term of this Agreement until such time as Company has provided the Grantor a Use Tax Certificate and Grantor has received the actual Use Tax Receipts from the State of Texas attributable to such period. Company shall provide such additional documentation as may be reasonably requested by Grantor to evidence, support and establish the use tax paid directly to the State of Texas pursuant to Company's Direct Payment Permit. The Use Tax Certificate for each Grant Period shall at a minimum contain, include or be accompanied by the following:

- a. A copy of all Texas Direct Payment Permit and self assessment use tax returns and reports during the applicable six (6) month Grant Period, including use tax audit assessments and any amended use tax returns or reports, filed by the Company showing use taxes paid directly to the State of Texas related to Company's operations during the Grant Period; and
- b. Information concerning any refund or credit received by the Company of use tax paid by the Company which has previously been reported by the Company as use tax paid for a previous Grant Period within the term of this agreement.

Grantor agrees to the extent allowed by law to maintain the confidentiality of every Use Tax Certificate.

4.02 Grantor must have received a Use Tax Certificate for the grant period for which payment of a Grant is requested, and Grantor must have received the actual Use Tax Receipts for all calendar months covered by the grant period.

4.03 The Company shall issue its Texas Direct Payment Permit to specific suppliers or vendors that provide large quantities of building materials or other tangible personal property.

4.04 The Company shall provide the Grantor with a true and correct copy of its Texas Direct Payment Permit, which permit shall be kept in full force and effect throughout the term of the Agreement.

4.05 Company shall not have an uncured material breach or default of this Agreement.

ARTICLE V  
TERMINATION

5. This Agreement may be terminated upon any one of the following:
- (a) by mutual written agreement of the parties;
  - (b) by Grantor or Company, respectively, if the other party defaults or breaches any of the terms or conditions of this Agreement in any material respect and such default or breach is not cured within thirty (30) days after written notice thereof by the Grantor or Company, as the case may be;
  - (c) by Grantor, if any Impositions owed to the Grantor or the State of Texas by Company shall have become delinquent (provided, however, that termination shall not be permitted until after the expiration or exhaustion of every right of the Company to timely and properly protest and contest any such Impositions);
  - (d) by Grantor, if Company suffers an Event of Bankruptcy or Insolvency;
  - (e) by Grantor or Company, respectively, if any subsequent Federal or State legislation or any decision of a court of competent jurisdiction declares or renders this Agreement invalid, illegal or unenforceable.

The rights, responsibilities and liabilities of the parties under this Agreement shall be extinguished upon the termination of this Agreement except for any rights, responsibilities or liabilities that accrued prior to such termination.

ARTICLE VI  
MISCELLANEOUS

6.01 Binding Agreement. The terms and conditions of this Agreement are binding upon the parties to this agreement and their respective successors and permitted assigns. This Agreement may be assigned with the express written consent of Grantor, which consent shall not be unreasonably withheld or delayed.

6.02 Limitation on Liability. It is understood and agreed between the parties that the Company and Grantor, in satisfying the conditions of this Agreement, have acted independently, and Grantor assumes no responsibilities or liabilities to third parties in connection with these actions. The Company agrees to indemnify and hold harmless the Grantor from all such claims, suits, and causes of actions, liabilities and expenses, including reasonable attorney's fees, of any nature whatsoever by a third party arising out of the Company's performance of the conditions under this Agreement.

6.03 No Joint Venture. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture between the parties.

6.04 Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that are granted and assumed under this Agreement.

6.05 Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below (or such other address as such party may subsequently designate in writing) or on the day actually received if sent by courier or otherwise hand delivered sent via fax.

If intended for City, to:

Attn: C J Snipes  
City Manager  
30603 Front St.  
Fulshear, TX 77441

With a copy to:

Attn: J. Grady Randle  
City Attorney  
Randle Law Office Ltd., L.L.P.  
820 Gessner, Suite 1570  
Houston, TX 77024-4494

If intended for the Company:

Attn: Dan Miller  
Chief Financial Officer  
Highland Homes - - Houston, Ltd.  
5601 Democracy Dr.  
Suite 300  
Plano, TX 75024

With a copy to:

Attn: Brad Gahm  
General Counsel  
5601 Democracy Dr.  
Suite 300



Plano, TX 75024

6.06 Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

6.07 Governing Law. The laws of the State of Texas shall govern the Agreement; and this Agreement is fully performable in Fulshear, Texas with exclusive venue for any action concerning this Agreement being in a court of competent jurisdiction in Fort Bend County, Texas.

6.08 Amendment. This Agreement may only be amended by the mutual written agreement of the parties.

6.09 Legal Construction. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision shall be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

6.10 Recitals. The recitals to this Agreement are incorporated herein.

6.11 Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument and any such counterparts shall be deemed to be incorporated herein.

6.12 Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

6.13 Dispute Resolution. Any controversy or claim arising from or relating to this Agreement, or a breach thereof shall be subject to non-binding mediation, as a condition precedent to the institution of legal or equitable proceedings by any party unless the institution of such legal or equitable proceeding is necessary to avoid the running of an applicable statute of limitation. The parties shall endeavor to resolve their claims by mediation. Grantor and Company shall share the costs of mediation equally. The mediation shall be held in Fulshear, Texas, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

EXECUTED as of the 17<sup>th</sup> day of March, 2015.

FULSHEAR, TEXAS

Thomas C. Kysel  
By: Mayor

ATTEST:

D. Gordon Offord  
D. Gordon Offord

By: City Secretary

EXECUTED as of the 30 day of March, 2015.

HIGHLAND HOMES - HOUSTON, LTD.

By: Dan Miller  
HIGHLAND MANAGEMENT, INC.

Name: Dan Miller \_\_\_\_\_

Title: Vice President \_\_\_\_\_